

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

(Filed: February 25, 2013)

DIANE M. DOBBS)	
)	No. 12-236V
)	
Petitioner,)	Joint Stipulation on
)	Damages; Influenza
v.)	Vaccine; Acute Transverse
)	Myelitis
SECRETARY OF THE DEPARTMENT)	
OF HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	

Mark L. Krueger, Baraboo, WI, for petitioner.
Gordon Elliot Shemin, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On April 11, 2012, petitioner, Diana Dobbs, filed a petition seeking compensation under the National Vaccine Injury Compensation Program (“the Vaccine Program”) for a vaccine-related injury.²

¹ The undersigned intends to post this decision on the website of the United States Court of Federal Claims, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). As provided by Vaccine Rule 18(b), each party has 14 days within which to file a motion for redaction “of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). In the absence of such motion, “the entire” decision will be available to the public. Id.

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C.A. §300aa-10- §300aa-34 (2006) (Vaccine Act or the Act). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

On February 22, 2013, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case.

Petitioner alleges that she developed transverse myelitis as a consequence of her influenza vaccine, which is contained in the Vaccine Injury Table (the “Table”), 42 C.F.R. § 100.3(a). Ms. Dobbs further alleges that she experienced the residual effects of this injury for more than six months and is seeking damages related to this injury pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34.

Respondent denies that petitioner’s alleged injury and residual effects were caused-in-fact by the influenza vaccine. Nonetheless, the parties have agreed informally to resolve this matter.

The court hereby **ADOPTS** the parties’ said Stipulation, attached hereto as Appendix A, and awards compensation in the amount and on the terms set forth therein. Specifically, petitioner is awarded:

A lump sum payment of \$165,000.00, in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a).

Stipulation ¶ 8(a).

The Vaccine Act also permits an award of reasonably incurred attorneys’ fees and costs. The parties have stipulated further that they have reached the following agreement with respect to attorneys’ fees and petitioner’s costs:

A lump sum of \$14,448.18 in the form of a check payable jointly to petitioner and petitioner’s attorney, Mark L. Krueger, for attorneys’ fees and costs available under 42 U.S.C. §300aa-15(e); and

A lump sum of \$343.86 in the form of a check payable to petitioner. This amount represents compensation for out-of-pocket litigation expenses that were incurred by petitioner in proceeding on the petition, and identified in compliance with General Order No. 9.

Id. ¶8(b) and (c).

The undersigned approves the requested amount for petitioner’s compensation. **Accordingly, an award should be made in the form of a check payable to petitioner in the amount of \$165,000.00.** In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance

with the terms of the parties' stipulation.³

The undersigned also approves the requested amount for attorneys' fees and costs as reasonable. **Accordingly, an award should be made in the form of a check payable jointly to petitioner and Mr. Mark Krueger in the amount of \$14,448.18. A separate award should be made in the form of a check to petitioner in the amount of \$343.86 for out-of-pocket expenses.** In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.⁴

IT IS SO ORDERED.

s/Patricia E. Campbell-Smith
Patricia E. Campbell-Smith
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

DIANE M. DOBBS,)	
)	
Petitioner,)	No. 12-236V
)	Chief Special Master Campbell-Smith
v.)	ECF
)	
SECRETARY OF HEALTH AND)	
HUMAN SERVICES)	
)	
Respondent.)	
)	

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to petitioner's receipt of the trivalent influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Petitioner received her flu vaccination on or about August 3, 2011.
3. The vaccine was administered within the United States.
4. Petitioner alleges that the flu vaccine caused her to develop transverse myelitis and that she experienced the residual effects of this condition for more than six months.
5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of her condition.
6. Respondent denies that the flu immunization is the cause of petitioner's alleged transverse myelitis and/or any other injuries.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

- a. A lump sum of \$165,000.00 in the form of a check payable to petitioner. This amount represents compensation for all damages that would be available under 42 U.S.C. §300aa-15(a);
- b. A lump sum of \$14,448.18 in the form of a check payable jointly to petitioner and petitioner's attorney, Mark L. Krueger, for attorney's fees and costs available under 42 U.S.C. § 300aa-15(e); and
- c. A lump sum of \$343.86 in the form of a check payable to petitioner. This amount represents compensation for out-of-pocket litigation expenses that were incurred by petitioner in proceeding on the petition, and identified in compliance with General Order #9.

9. Petitioner and her attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

10. Payments made pursuant to paragraph 8 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

11. The parties and their attorneys further agree and stipulate that, except for any award for attorney's fees and litigation costs, and past unreimbursable expenses, the money provided pursuant to this Stipulation will be used solely for the benefit of petitioner as contemplated by a

strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

12. In return for the payments described in paragraph 8, petitioner, in her individual capacity, and on behalf of her heirs, executors, administrators, successors and/or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of petitioner resulting from, or alleged to have resulted from, the flu vaccination administered on August 3, 2011, as alleged by petitioner in a petition for vaccine compensation filed on or about April 11, 2012, in the United States Court of Federal Claims as petition No. 12-236V.

13. If petitioner should die prior to entry of judgment, this agreement shall be voidable upon proper notice to the Court on behalf of either or both of the parties.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

15. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing

other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccine caused petitioner's alleged transverse myelitis and/or any other injury.

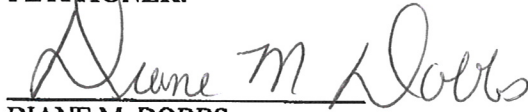
17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns.

END OF STIPULATION

[illegible]

Respectfully submitted,

PETITIONER:



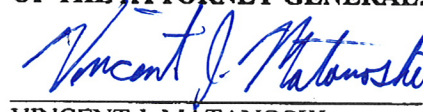
DIANE M. DOBBS

**ATTORNEY OF RECORD FOR
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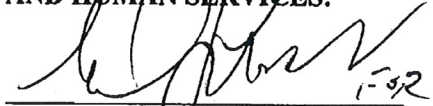
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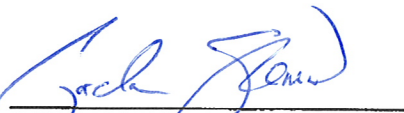
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Dated: 2-22-13